

Tennessee Judicial Nominating Commission
Application for Nomination to Judicial Office

Rev. 26 November 2012

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INTRODUCTION

Tennessee Code Annotated section 17-4-101 charges the Judicial Nominating Commission with assisting the Governor and the People of Tennessee in finding and appointing the best qualified candidates for judicial offices in this State. Please consider the Commission's responsibility in answering the questions in this application questionnaire. For example, when a question asks you to "describe" certain things, please provide a description that contains relevant information about the subject of the question, and, especially, that contains detailed information that demonstrates that you are qualified for the judicial office you seek. In order to properly evaluate your application, the Commission needs information about the range of your experience, the depth and breadth of your legal knowledge, and your personal traits such as integrity, fairness, and work habits.

This document is available in word processing format from the Administrative Office of the Courts (telephone 800.448.7970 or 615.741.2687; website <http://www.tncourts.gov>). The Commission requests that applicants obtain the word processing form and respond directly on the form. Please respond in the box provided below each question. (The box will expand as you type in the word processing document.) Please read the separate instruction sheet prior to completing this document. Please submit the completed form to the Administrative Office of the Courts in paper format (with ink signature) **and** electronic format (either as an image or a word processing file and with electronic or scanned signature). Please submit fourteen (14) paper copies to the Administrative Office of the Courts. Please e-mail a digital copy to debra.hayes@tncourts.gov.

THIS APPLICATION IS OPEN TO PUBLIC INSPECTION AFTER YOU SUBMIT IT.

PROFESSIONAL BACKGROUND AND WORK EXPERIENCE

1. State your present employment.

Attorney; Partner, Thomason, Hendrix, Harvey, Johnson & Mitchell

2. State the year you were licensed to practice law in Tennessee and give your Tennessee Board of Professional Responsibility number.

1978; 6361

3. List all states in which you have been licensed to practice law and include your bar number or identifying number for each state of admission. Indicate the date of licensure and whether the license is currently active. If not active, explain.

Tennessee; BPR #6361; licensed on September 30, 1978, license active.

4. Have you ever been denied admission to, suspended or placed on inactive status by the Bar of any State? If so, explain. (This applies even if the denial was temporary).

No.

5. List your professional or business employment/experience since the completion of your legal education. Also include here a description of any occupation, business, or profession other than the practice of law in which you have ever been engaged (excluding military service, which is covered by a separate question).

Associate attorney, Thomason, Crawford & Hendrix, 1978-1982.

Partner, Thomason, Hendrix, Harvey, Johnson & Mitchell, PLLC, 1982-present.

I am also a writer, having authored five books, including a biography of Senator Howard Baker

scheduled for publication this fall.

6. If you have not been employed continuously since completion of your legal education, describe what you did during periods of unemployment in excess of six months.

Not applicable.

7. Describe the nature of your present law practice, listing the major areas of law in which you practice and the percentage each constitutes of your total practice.

My primary focus over the past thirty-five years has been health care law, representing doctors, hospitals, and medical groups. I devote approximately ninety percent of my practice to health care law, primarily defending doctors, hospitals, and medical groups in malpractice cases.

The other ten percent of my practice is devoted to business litigation clients, in such areas as employment law, construction lawsuits, media law, and professional liability cases against lawyers, architects, and engineers.

8. Describe generally your experience (over your entire time as a licensed attorney) in trial courts, appellate courts, administrative bodies, legislative or regulatory bodies, other forums, and/or transactional matters. In making your description, include information about the types of matters in which you have represented clients (e.g., information about whether you have handled criminal matters, civil matters, transactional matters, regulatory matters, etc.) and your own personal involvement and activities in the matters where you have been involved. In responding to this question, please be guided by the fact that in order to properly evaluate your application, the Commission needs information about your range of experience, your own personal work and work habits, and your work background, as your legal experience is a very important component of the evaluation required of the Commission. Please provide detailed information that will allow the Commission to evaluate your qualification for the judicial office for which you have applied. The failure to provide detailed information, especially in this question, will hamper the evaluation of your application. Also separately describe any matters of special note in trial courts, appellate courts, and administrative bodies.

I have tried over 100 jury trials and countless non-jury trials over the past thirty-five years and have argued approximately twenty-five appellate cases before the Tennessee Supreme Court, the Tennessee Court of Appeals, and the United States Court of Appeals for the Sixth Circuit.

As noted above, the overwhelming focus of my practice has been health care law, representing doctors, hospitals, and medical groups. I have defended literally hundreds of medical malpractice cases, and I have also tried two medical anti-trust cases.

I have also been defense counsel in trials of defamation cases for media defendants, construction

cases, and malpractice cases against lawyers, architects, and engineers.

I have also represented doctors in proceedings before the State Board of Medical Licensure.

I have taught health care law as a member of the adjunct faculty of the University of Tennessee Center for the Health Sciences for thirty-three years, and I frequently lecture to physicians, medical students, and other health care providers regarding health care law issues.

9. Also separately describe any matters of special note in trial courts, appellate courts, and administrative bodies.

I have been involved in a number of unique and noteworthy cases during my career, a number of them involving issues of first impression in Tennessee. Among them are the following:

Penley v. Honda Motor Company, 31 S.W.3d 181(Tenn. 2000).

In this case, I served as counsel for the appellant, having been brought in the case solely for the purpose of briefing and arguing the appeal before the Court of Appeals and the Supreme Court. The issue in the case was whether the ten year statute of repose, codified in the Tennessee Products Liability Act, T.C.A. §29-28-103(a) is tolled during the pendency of a plaintiff's mental incompetence. It was an issue of first impression in Tennessee. The Court held that the ten year statute of repose is not tolled during any period of a plaintiff's alleged mental incompetency.

Mills v. Wong, 155 S.W.3d 916 (Tenn. 2005).

In this case, I served as counsel for the appellee. Once again, the issue involved whether the statute of repose is tolled during mental incompetency. The issue in this case was different, however, from the issue in Penley v. Honda in that the appellant advanced a Constitutional argument for tolling the statute of repose during the period of mental incompetency on the basis that the appellant had a Constitutionally-protected vested property interest. The Tennessee Supreme Court rejected this argument and affirmed the dismissal of this case.

Major v. Lakeside Hospital, No.42, 1990 Tenn. App. LEXIS 621 (Tenn. Ct. App. 1990).

This case involved another issue of first impression, specifically whether there is a cause of action under Tennessee law for invasion of privacy for alleged public disclosure of private facts. The Court of Appeals affirmed the dismissal of the case by the trial court, finding that the complaint failed to state facts sufficient to state a claim for which relief could be granted for invasion of privacy.

Gantt v. K-Mart, No. 02A01-9801-CV-00009, 1999 Tenn. App. LEXIS 100 (Tenn. Ct. App. 1999).

This was a case of first impression in Tennessee dealing with the premises liability issue of injury to third persons by fleeing shoplifters, particularly in the context of T.C.A. §40-7-116(d),

which gives the merchant a right to use "a reasonable amount of force" in detaining a suspected shoplifter. In this case, the fleeing shoplifter injured the plaintiff as he was being chased by security personnel. I was counsel for the appellee, and the Court of Appeals sustained my position that while the Supreme Court's decision in McClung v. Delta Square Limited Partnership, 937 S.W.2d 891 (Tenn. 1996), changed the common law rule of non-liability for third party criminal acts, it did not render a merchant the insurer of patrons' safety from third party criminal activity, and that the actions of the fleeing shoplifter in this particular case were not foreseeable.

10. If you have served as a mediator, an arbitrator or a judicial officer, describe your experience (including dates and details of the position, the courts or agencies involved, whether elected or appointed, and a description of your duties). Include here detailed description(s) of any noteworthy cases over which you presided or which you heard as a judge, mediator or arbitrator. Please state, as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency; (3) a summary of the substance of each case; and (4) a statement of the significance of the case.

While I have never served as a judicial officer, I have served on arbitration panels, most recently a panel with Judge Joe Riley concerning a personal injuries case against a municipality that held a "drag race" on a city street as part of a public festival. Unfortunately, one of the vehicles in the race careened into a crowd, killing a number of spectators. The matter was submitted to arbitration, and I was a member of the panel that resolved the dispute.

I have also been called upon to serve as a mediator. While I'm currently not a Rule 31 listed mediator, I am a graduate of the Lipscomb University Alternative Dispute Resolution/Mediation Training Course.

11. Describe generally any experience you have of serving in a fiduciary capacity such as guardian ad litem, conservator, or trustee other than as a lawyer representing clients.

Approximately two years ago, I was appointed by the Shelby County Probate Court to serve as counsel for a conservator in a case involving a legal challenge to an adoption. Interestingly, the adoption at issue was by an 80-year-old man of a 50-year-old woman. The Court appointed me as counsel for the conservator of the 80-year-old man, and I was able to get the "adoption" set aside on the basis of fraud.

12. Describe any other legal experience, not stated above, that you would like to bring to the attention of the Commission.

In addition to my work as a trial and appellate advocate in the health care law field, I have also served as chair of the Board of Editors of four journals, including the *ABA Journal* (the official journal of the American Bar Association), the *Tennessee Bar Journal* (the official journal of the

Tennessee Bar Association), *Barrister* (formerly the official journal of the American Bar Association Young Lawyer's Division), and the *Memphis Lawyer* (the official journal of the Memphis Bar Association).

13. List all prior occasions on which you have submitted an application for judgeship to the Judicial Nominating Commission or any predecessor commission or body. Include the specific position applied for, the date of the meeting at which the body considered your application, and whether or not the body submitted your name to the Governor as a nominee.

In 2008, I submitted an application to the Judicial Nominating Commission for a position on the Tennessee Court of Appeals, Western Section, following the death of my long-time mentor, Judge William Frank Crawford. The Commission met on May 21, 2008 to consider my application. The Commission submitted my name to Governor Phillip Bredesen as a nominee.

EDUCATION

14. List each college, law school, and other graduate school which you have attended, including dates of attendance, degree awarded, major, any form of recognition or other aspects of your education you believe are relevant, and your reason for leaving each school if no degree was awarded.

University of Tennessee, 1971-1975, BA, 1975; Major - History.

I was President of the student body and was named a Torchbearer in the Class of '75.

University of Tennessee College of Law, 1975-1978, Doctor of Jurisprudence Degree. In law school I was a member of the National Moot Court team, an Advocates Prize finalist, and named the top attorney in Trial Moot Court.

PERSONAL INFORMATION

15. State your age and date of birth.

61; June 10, 1952.

16. How long have you lived continuously in the State of Tennessee?

61 years.

17. How long have you lived continuously in the county where you are now living?

61 years, with the exception of the seven years when I was attending the University of Tennessee and the University of Tennessee College of Law.

18. State the county in which you are registered to vote.

Shelby.

19. Describe your military Service, if applicable, including branch of service, dates of active duty, rank at separation, and decorations, honors, or achievements. Please also state whether you received an honorable discharge and, if not, describe why not.

Not applicable.

20. Have you ever pled guilty or been convicted or are you now on diversion for violation of any law, regulation or ordinance? Give date, court, charge and disposition.

No.

21. To your knowledge, are you now under federal, state or local investigation for possible violation of a criminal statute or disciplinary rule? If so, give details.

No.

22. If you have been disciplined or cited for breach of ethics or unprofessional conduct by any court, administrative agency, bar association, disciplinary committee, or other professional group, give details.

No.

23. Has a tax lien or other collection procedure been instituted against you by federal, state, or local authorities or creditors within the last five (5) years? If so, give details.

No.

24. Have you ever filed bankruptcy (including personally or as part of any partnership, LLC, corporation, or other business organization)?

No.

25. Have you ever been a party in any legal proceedings (including divorces, domestic proceedings, and other types of proceedings)? If so, give details including the date, court and docket number and disposition. Provide a brief description of the case. This question does not seek, and you may exclude from your response, any matter where you were involved only as a nominal party, such as if you were the trustee under a deed of trust in a foreclosure proceeding.

No.

26. List all organizations other than professional associations to which you have belonged within the last five (5) years, including civic, charitable, religious, educational, social and fraternal organizations. Give the titles and dates of any offices which you have held in such organizations.

Member, Calvary Episcopal Church, where I have served as a lay minister, Sunday school teacher, and leader of a weekly men's Bible study. I have also served as Senior Warden, the chair of the church board.

Grace St. Luke's Episcopal School, Past President, Board of Trustees.

White Station High School Parents Association, Past President.

Tennessee Commission on Civics Education, 2007 until it was "sunsetting."

Adjunct faculty, University of Tennessee Center for the Health Sciences, teaching health care law.

27. Have you ever belonged to any organization, association, club or society which limits its membership to those of any particular race, religion, or gender? Do not include in your answer those organizations specifically formed for a religious purpose, such as churches or synagogues.
- If so, list such organizations and describe the basis of the membership limitation.
 - If it is not your intention to resign from such organization(s) and withdraw from any participation in their activities should you be nominated and selected

for the position for which you are applying, state your reasons.

I have never belonged to any such organization, association, club or society.

ACHIEVEMENTS

28. List all bar associations and professional societies of which you have been a member within the last ten years, including dates. Give the titles and dates of any offices which you have held in such groups. List memberships and responsibilities on any committee of professional associations which you consider significant.

Tennessee Bar Association, since 1978; I served as President of the Association in 2005-2006.

Memphis Bar Association, since 1978; I served as President of the Association in 2000-2001.

American Bar Association, since 1978; I served as Chair of the Board of Editors of the ABA Journal, from 1998-2003.

Fellow, American College of Trial Lawyers, since 2007.

29. List honors, prizes, awards or other forms of recognition which you have received since your graduation from law school which are directly related to professional accomplishments.

In 1989, I received the Sam A. Myar, Jr. Memorial Award of the Memphis Bar Association as the outstanding young lawyer in the City of Memphis.

In 2001, I received the "Luminary Award" from the National Association of Bar Executives for my book, In Search of Hamilton Burger: the Trials and Tribulations of a Southern Lawyer.

In 2003, I received the Best Personal Columnist Award from the Tennessee Press Association.

In 1986, I received the "Editorial Excellence Award" from the American Society of Business Press Editors for my editorship of *Barrister*.

30. List the citations of any legal articles or books you have published.

I am the author of the following five books:

Daddies: An Endangered Species (Guild Bindery Press, 1996).

In Search of Hamilton Burger: The Trials and Tribulations of a Southern Lawyer (TBA Press,

2001).

No Controlling Legal Authority (TBA Press, 2005).

Some Assembly Required: A Daddy's Christmas Book (Daddy's Press, 2010).

The Other Fellow May Be Right: The Civility of Senator Howard Baker (Keith Publishing, 2013). This book is scheduled for publication this fall.

I was also a contributing author to The Lawyer's Cooperative Federal Practice Guide, (American Inns of Court Series, 1996), writing the chapter on discovery and mandatory disclosures under the federal rules.

Also, over the years, I have authored over 200 articles for the Tennessee Bar Journal, although most of them have been humor columns, as opposed to works of legal scholarship.

31. List law school courses, CLE seminars, or other law related courses for which credit is given that you have taught within the last five (5) years.

"Balancing Civility and Free Expression" – Statewide civility program held over the last few months at the Howard Baker Center for Public Policy at the University of Tennessee, Lipscomb University, and the University of Memphis Law School. In the program at the Baker Center, I led a panel discussion featuring Governor Bill Haslam, Governor Phil Bredesen, and Governor Don Sundquist on the importance of civility in the public arena.

"The Other Fellow May be Right: The Importance of Civility in Law Practice," CLE for federal government lawyers, TVA, Knoxville, December 2012.

Commencement speaker, University of Memphis Law School, 2007.

Keynote Speaker, Virginia Bar Association Convention 2008 – Gave speech on "Answering the Call", approaching law as a ministry.

Keynote speaker, Arkansas Bar Convention, 2008.

"How a Judge Deals with the Media," Tennessee Judicial Conference, Fall, 2007.

Leadership seminar, Arkansas Bar Association Young Lawyer's Division, 2009. Spoke on the topic of law as public service.

I have also conducted numerous CLE programs over the last few years on the topics of civility and trial practice.

32. List any public office you have held or for which you have been candidate or applicant.

Include the date, the position, and whether the position was elective or appointive.

I have never run for public office.

33. Have you ever been a registered lobbyist? If yes, please describe your service fully.

No.

34. Attach to this questionnaire at least two examples of legal articles, books, briefs, or other legal writings which reflect your personal work. Indicate the degree to which each example reflects your own personal effort.

Attached is a copy of "Memphis Inductee Names Role Models", The Bulletin, American College of Trial Lawyers, 2007.

Also attached is a copy of "Civil Litigation", a chapter of my forthcoming book on Senator Howard Baker, about his eighteen years as a trial lawyer. I have used this chapter in recent civility programs and CLE seminars. Both of these articles reflect my own personal effort to state what I love about the law and how I believe lawyers and judges should conduct ourselves.

ESSAYS/PERSONAL STATEMENTS

35. What are your reasons for seeking this position? *(150 words or less)*

I am first-generation lawyer who believes that law is a calling. I believe that what makes our nation great is the rule of law and the legal system in which it is applied.

I also believe that the rule of law in Tennessee is preserved and maintained in our appellate courts, and I have a particular reverence for the Western Section of the Tennessee Court of Appeals. During my career, that court has not only upheld the rule of law but has been the model for civility, courtesy and respect.

For the past thirty-five years, I have been a trial and appellate advocate, and I believe I have an understanding and a deep appreciation of the role of the Tennessee Court of Appeals in upholding the rule of law, and I would value the opportunity to be a part of that process.

36. State any achievements or activities in which you have been involved which demonstrate your commitment to equal justice under the law; include here a discussion of your pro bono service throughout your time as a licensed attorney. *(150 words or less)*

In 2003, I, along with Dr. Benjamin Hooks, co-chaired the Memphis Area Legal Services Campaign for Equal Justice, the annual fundraising campaign for Memphis Area Legal Services.

In 2006, I chaired the first “Tennessee Bar Association Diversity Summit” at the National Civil Rights Museum in Memphis, which brought together judges and lawyers from across the state to discuss how we can improve access to justice and increase the diversity of our profession.

During my year as Tennessee Bar Association President, I led a state-wide public education campaign, “Freedom’s Foundation”, in which the TBA sought to educate the public about the importance of equal justice under the law.

Over the years I have been pro bono legal counsel for the Church Health Center, Memphis Downtown Urban Ministries, and a United Way-sponsored day care center.

37. Describe the judgeship you seek (i.e. geographic area, types of cases, number of judges, etc. and explain how your selection would impact the court. *(150 words or less)*

I seek to serve on the Tennessee Court of Appeals for the Western Section, hearing civil case appeals. I believe I would bring to the Court a deep and abiding love for the law, a wealth of experience in trial and appellate advocacy, and a commitment to courtesy, civility, and respect for the law.

38. Describe your participation in community services or organizations, and what community involvement you intend to have if you are appointed judge? *(250 words or less)*

I have over the years been a leader in my church, my children’s schools, professional associations, and faith-based community organizations such as the Church Health Center and Memphis Downtown Ministries.

I have also coached mock trial teams at three Memphis high schools.

I believe it is important for judges to maintain this sort of work in the community, and I intend to continue this work if I am appointed a judge. I will do so because first, it is important for a judge to maintain a healthy understanding of how the rule of law actually works in the real world.

Second, I believe a judge needs to remain active in the community to be a role model and to show the community that judges do not hide behind the bench or in their judicial chambers. They should strive to be leaders and teachers in their churches, their neighborhoods, schools, and community service and faith-based organizations.

39. Describe life experiences, personal involvements, or talents that you have that you feel will be of assistance to the Commission in evaluating and understanding your candidacy

for this judicial position. *(250 words or less)*

I come from a long line of ministers. My father was a Baptist minister. My great-grandfather was a "Circuit Riding" Methodist minister. I have a countless number of uncles and cousins in my family who are all either ministers or missionaries.

When I was a boy, everyone in my family expected me to "get the call" to the ministry. But from an early age, I was attracted to law. This is hard to explain inasmuch as I never met a lawyer until I was in college.

When I was twelve, I "confessed" my interest in the law to my father. He reassured me that not everyone is called to the ordained ministry, but we are all called to be ministers in different aspects of life. He told me to read Micah Chapter Six, Verse eight. "What does the Lord require of thee, but to *do justice*, and love mercy, and walk humbly with thy God?"

Based on that verse, and my father's example, I tried to live my life in the law as a calling, and I believe I can bring this approach to a position on the Court of Appeals.

40. Will you uphold the law even if you disagree with the substance of the law (e.g., statute or rule) at issue? Give an example from your experience as a licensed attorney that supports your response to this question. *(250 words or less)*

I will absolutely uphold the law even if I disagree with the substance of the statute or rule at issue. My role model would be United States Chief Justice John Roberts. At his confirmation hearing a few years ago, he compared the role of a judge to that of a baseball umpire. He said that an umpire should never take the bat out of a batter's hands and hit the ball or take the ball out of a pitcher's hands and throw the ball. The role of an umpire is to call ball, strike, fair, foul, safe, or out.

I believe that was a perfect description of what a judge should do. If I am given an opportunity to serve on the Court of Appeals, I will not strive to make laws as if I were a legislator. I will strive to interpret and apply laws.

During my thirty-five year long career as a lawyer, I have opposed efforts to create "legislation by litigation." I do not believe that is the proper use of law, and in my practice I have always worked to advance the position of my clients on the basis of the current state of the law.

REFERENCES

41. List five (5) persons, and their current positions and contact information, who would recommend you for the judicial position for which you are applying. Please list at least two persons who are not lawyers. Please note that the Commission or someone on its behalf may contact these persons regarding your application.

A. Ann Langston, Executive Director, Church Health Center, 1210 Peabody Avenue, Memphis, TN 38104, (901) 272-7170.

B. Judge Curtis Person, Shelby County Juvenile Court, 616 Adams Avenue, Memphis, TN 38105, (901) 405-8574.

C. Dr. Keith Carver, Executive Assistant to the President of the University of Tennessee, Office of the President, Andy Holt Tower, Knoxville, Tennessee, (865) 974-2241

D. Dr. Hank Herrod, Executive Director, The Urban Child Institute, 600 Jefferson Avenue, Memphis, Tennessee 38105; (901) 523-9199

E. Dr. Henry Sullivant, Physician, The Ruch Clinic, 6215 Humphrey's Blvd. #500, Memphis, Tennessee 38120, (901) 682-0630

AFFIRMATION CONCERNING APPLICATION

Read, and if you agree to the provisions, sign the following:

I have read the foregoing questions and have answered them in good faith and as completely as my records and recollections permit. I hereby agree to be considered for nomination to the Governor for the office of Judge of the [Court] Court of Appeal, Western Section of Tennessee, and if appointed by the Governor, agree to serve that office. In the event any changes occur between the time this application is filed and the public hearing, I hereby agree to file an amended questionnaire with the Administrative Office of the Courts for distribution to the Commission members.

I understand that the information provided in this questionnaire shall be open to public inspection upon filing with the Administrative Office of the Courts and that the Commission may publicize the names of persons who apply for nomination and the names of those persons the Commission nominates to the Governor for the judicial vacancy in question.

Dated: JUNE 10, 2013.



Signature

When completed, return this questionnaire to Debbie Hayes, Administrative Office of the Courts, 511 Union Street, Suite 600, Nashville, TN 37219.



TENNESSEE JUDICIAL NOMINATING COMMISSION


511 UNION STREET, SUITE 600
NASHVILLE CITY CENTER
NASHVILLE, TN 37219

**TENNESSEE BOARD OF PROFESSIONAL RESPONSIBILITY
TENNESSEE BOARD OF JUDICIAL CONDUCT
AND OTHER LICENSING BOARDS**

WAIVER OF CONFIDENTIALITY

I hereby waive the privilege of confidentiality with respect to any information which concerns me, including public discipline, private discipline, deferred discipline agreements, diversions, dismissed complaints and any complaints erased by law, and is known to, recorded with, on file with the Board of Professional Responsibility of the Supreme Court of Tennessee, the Tennessee Board of Judicial Conduct (previously known as the Court of the Judiciary) and any other licensing board, whether within or outside the state of Tennessee, from which I have been issued a license that is currently active, inactive or other status. I hereby authorize a representative of the Tennessee Judicial Nominating Commission to request and receive any such information and distribute it to the membership of the Judicial Nominating Commission and to the office of the Governor.

William H. Haltom, Jr.
Type or Printed Name


Signature

June 10, 2013
Date

6361
BPR #

Please identify other licensing boards that have issued you a license, including the state issuing the license and the license number.

N/A

MEMPHIS INDUCTEE

names

ROLE MODELS

It is customary at the Annual and Spring Meetings of the College for a representative of new Inductees to respond on behalf of all of the inductees. At the Spring 2007 meeting at La Quinta, the response was given by **William H. Haltom, Jr.** from Memphis, Tennessee. His remarks follow.



William H. Haltom, Jr.

When I was a little boy growing up in the Baptist church that my father pastored in North Memphis, our congregation would gather together on Wednesday nights for something called mid-week prayer meeting.

Now, a mid-week prayer meeting was much less formal than a Sunday morning service. There wasn't a choir behind my father; there wasn't a music minister; there wasn't even an organist; there wasn't a group of Deacons presenting what was called in Baptist circles an "Amen corner" for my Dad. Rather, at the appointed hour my Dad would walk up to the front of the congregation with an opening prayer and then he would ask a question. And it was the same question every week. The question was: "Would anybody here tonight like to testify?"

Now, let me quickly add for those of you who are not from the Evangelical Church that the term "testify" in the Evangelical Church is something very different from what you and I are used to. Dad never put anybody under oath, no Deacon ever cross examined anybody. But what happened when you testified was this: It was an invitation for members of the church to stand up and briefly tell their story and talk about how blessed they were to be a part of the congregation.

Sometimes the story started off kind of sad. People would talk about adversity they had in life. People would talk about maybe an illness, maybe the loss of a loved one. Sometimes the story started off happy because they would talk about getting a good job. But invariably the testimony always ended on a wonderful and happy note because invariably the brother or sister would

always say, "I feel so blessed by God to be a part of this great church."

When David [President David Beck] called me a few weeks ago and asked me if I would make the response tonight, I immediately said, "Yes" and "Thank you." And then after I hung up, I thought, "Oh my God. I'm a trial lawyer, so I'm not shy. I love to speak." So to speak to hundreds of the greatest trial lawyers of America, I felt a little bit like the story about the man at an early age of life survived the Johnstown flood. And all his life he wrote about it, wrote articles about it, gave lectures about it. And when he died and went to heaven St. Peter met him, and he said, "Welcome to heaven." He said, "Thank you very much." And St. Peter said, "If there's anything we can do to make your stay here more enjoyable, you just tell us." And he said, "Well you know, when I was a young man I survived the Johnstown flood." And St. Peter said, "Oh yes, we are very well aware of that." And he said, "During my life I wrote articles about it. I lectured about it and maybe the folks in heaven would like to hear that story." And St. Peter said, "We will put that together."

Well, a few days later they announced that there was going to be a lecture in heaven, and this man that survived the Johnstown flood was going to lecture. And literally thousands of souls gathered into this great auditorium and St. Peter was going to introduce him. And just as the program was about to start St. Peter

waved to the man and he said, "By the way, you see that man on the front row with the long white beard? That's Noah."

Well, that's the way I feel tonight. And so I began to think what I was going to say in response, and I decided the best thing for me to do, harkening back to those Wednesday nights of long ago, is to testify. And let me briefly give you my testimony:

I am a first generation lawyer and very proud of that. I come from a long line of preachers, not just my Dad, but my great-grandfather, my uncle. All the men in my family, as my wife, Claudia, can tell you, all the men in my family are preachers. My late mother wanted to be a preacher as well, but we were Southern Baptists, and the Southern Baptists are not equal opportunity employers.

And so I grew up with the conviction that I was going to some day be a minister like my Dad and all the men in my family. But a funny thing happened to me on the way to seminary: I met three trial lawyers. And I met them all when I was a little boy. And it's interesting how I met them. The first trial lawyer I met came into my home on a September night in 1957. He wasn't invited in. He didn't break in, but he suddenly appeared in black and white on a Sylvania TV screen. His name was Perry Mason.

Perry Mason was the first trial lawyer I ever met. I didn't know what trial lawyers were until I saw Perry Mason. And he had two remarkable attributes that I began

to notice. One, Perry always represented innocent clients. And number two, Perry always won. And he didn't just win, he won big. Perry was a criminal defense lawyer who did not believe in the weenie reasonable doubt defense. The way Perry won at trial was that he proved who the actual killer was, because, incredibly enough, the actual killer always came to the trial and sat in the gallery.

Now this is simply a hypothetical, but if I'm down visiting my friend David Beck in Houston and I get into some altercation in a bar and kill somebody and somebody else is charged and David is defending him, I'm not coming back to Houston for the trial. But with Perry Mason the real killer always came to the trial, and that's how Perry always won, because he was the greatest cross examiner of all times. You see, Perry's cross examination didn't just wear down the witness on the witness stand. You and I can do that. He would wear down the real killer in the back of the courtroom to the point that Perry's cross examination would be interrupted dramatically with the real killer standing up saying, "Stop it Mr. Mason. He didn't do it. I did it." It was magnificent. He was the first trial lawyer I ever met.

But on that September night when I was five years old, I met the second trial lawyer of my life. He also came on my television screen. His name was Hamilton Burger. Hamilton Burger was the prosecutor on the Perry Mason Show. Hamilton Burger had the

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longest losing streak in the history of American jurisprudence. Hamilton Burger and Perry Mason tried one case a week from September of 1957 through May of 1966. They took the summers off, but that's thirty-six trials a year for ten years. Hamilton lost three hundred thirty-six consecutive trials, all on national television. One can only imagine what Nancy Grace [the hostess on Court TV] would say about Hamilton Burger.

Now when I was a little boy I wanted more than anything to grow up to be a trial lawyer like Perry. I wanted to always represent innocent clients and I wanted to win week after week after week on national television, proving who the real killer was. But I am now in my thirtieth year of law practice, and I will tell you that my hero is not Perry Mason. My hero is Hamilton Burger. Here was a man who lost one trial a week on national television to Perry Mason and never lost his job as District Attorney!

Which leads me to a third trial lawyer I met when I was a child. He came into my life at the Northgate Theatre at a shopping center in North Memphis in 1962. His name was Atticus Finch. Atticus Finch had something in common with Perry Mason and something in common with Hamilton Burger. Like Perry, he had an innocent client named Tom Robinson, but like Hamilton he lost. I will never forget the scene in the movie after the jury had returned a verdict against Tom Robinson. Atticus Finch slowly packed his briefcase and began

to walk out of the courtroom. The African American citizens of Maycomb spontaneously rise in his honor. There are two little kids in the gallery, Scout and Jem, and Reverend Sikes, the minister of the community, the African-American community, (he) awakened Scout and Jem and, addressing Scout by her proper name, said, "Miss, will you stand up. Your father is passing."

It was at that moment I knew I wanted to be a trial lawyer. I really wanted to be a trial lawyer, but you see it was a secret I had to keep because everybody in the family was expecting me to be a minister. And this is where my testimony closes. It closes on June 10, 1964, my twelfth birthday. On my twelfth birthday my mother made for me all my favorite food: fried chicken, fried corn on the cob, fried peach pie. We were Southern Fried Baptists; that's what we ate.

And then she gave me my birthday present. I opened it up. It was a Bible. It wasn't just a Bible. It was a Scofield Reference Bible, just like my Daddy preached from every Sunday. And it came with a big string attached, because my mother said, "Son, you are going to use this for the rest of your life because you are going to be a minister like your Dad." My heart sank. I couldn't tell her about Perry Mason. I couldn't tell her about Hamilton Burger. I couldn't tell her about Atticus Finch, so I just said, "Thank you."

Later that night I went to my Dad. And I said, "Dad, thank you for the Bible, but I have a se-

cret to tell you. Mom expects me to be a minister and I want to be a lawyer." And my Dad looked at me and he said, "Your mother is right." Now my heart really sank, because on my twelfth birthday I was going to disappoint my mother *and* my father. But then he said this: "You take that Bible that Mom gave you. You look in the Sixth Chapter of Micah (that was referred to just now in the invocation) and look and see what it says." And so I did.

And it said, "What does the Lord require of us but to do justice, to have mercy, and to walk humbly with our God." And then my Dad said this. "I believe that your mother is right and that you are going to be called to a life of ministry. Some people are called to lives of ministry as ordained ministers. Some people are called to lives of ministry as teachers or architects, and maybe, maybe, there's a life of ministry in the law."

I share that testimony with you for this reason, not to tell you I have some unique calling from above. I do not. I think we all have the great ability every day to help people in need, help people whose lives are in dispute, and it is so noble to speak for people and to be their advocate. So that is my testimony tonight. It is not under oath, but it is from the heart, and on behalf of my class it is a great honor to be a part of this wonderful organization.

Thank you very much.



CHAPTER 4 – CIVIL LITIGATION

In the summer of 1925, just a few months before Howard Baker's birth, hundreds of Tennesseans as well newspaper reporters from around the country descended upon the Rhea County Courthouse in Dayton, Tennessee. They packed the galleries to watch the trial of John Thomas Scopes, a twenty-four year old football coach who agreed to be indicted for violating a Tennessee law that banned the teaching of Evolution. Never mind that Coach Scopes was simply a substitute teacher who couldn't recall ever teaching evolution. Like football, it was just a game to Coach Scopes who had been recruited by the American Civil Liberties Union and several "progressive" leaders in Dayton, Tennessee to set up a heavyweight legal battle between legendary trial lawyer Clarence Darrow and world-famous orator William Jennings Bryan.

Thirty years after this "trial of the Century", folks in East Tennessee were still packing the courtroom galleries to watch jury trials. And the lawyer they came to watch was young Howard Baker.

After graduating from law school in 1949, Howard Baker returned to Huntsville and joined the firm of Baker and Baker, the law firm his grandfather had started in 1886. His father insisted that the newest Baker lawyer start practice in General Sessions Court, in effect the Class A baseball of trial courts, where the smallest claims were litigated.

The young lawyer also took on a load of criminal cases. Years later he would recall, "My very best clients were in jail. Sometimes I was hired by someone who was yelling out the jail window as I was walking to lunch."

After trying a few cases solo in the general sessions and criminal courts, Howard Baker, Jr. joined Howard Baker, Sr. as they tried a jury case together. Baker Senior deferred to Baker,

Jr. to do the closing argument, and then Howard Henry, as his father called him, delivered a closing summation that was more classical oratory than East Tennessee common sense.

When the trial was over, Howard Baker, Sr. gave Howard Baker, Jr. a critique: “You were alright”, he said. “but the clarity of your words sometimes exceeds the wisdom of your thoughts.”

Young Baker took note and began to address juries with a conversational style that he would later use on the campaign trail and even later on the floor of the United States Senate.

Soon the word began to spread through Tennessee courthouses. Howard Baker was emerging, in the words of the great trial lawyer Ray H. Jenkins, as “the outstanding young lawyer in East Tennessee.”

Howard Baker loved being in the courtroom. Decades later, even after his service as a United States Senator, White House Chief of Staff, and Ambassador, Howard Baker would say he enjoyed law practice more than any part of his career.

Thanks in large measure to his grandfather and father, he inherited some very rich and powerful clients, including the Southern Railroad, utility interests, coal and lumber companies.

But the clients he loved the most were generally those who could not afford to pay him a penny. They were clients who desperately needed him because they had been charged with murder.

Howard Baker loved defending capital cases. He tried 63 such cases over 17 years. When he looked back on these cases years later he would remember, “Till this day there is nothing I can think of that has a more riveting effect on your attention and is a greater challenge to your ability than to try to defend somebody in a capital case. It really is an extraordinary responsibility.”

Not everyone in Huntsville appreciated the young lawyer's willingness to take on such extraordinary responsibilities. When Baker agreed to defend a local scoundrel named Bob Lambert, Baker got a visit from his best friend, Bill Swain. Swain was also Baker's best client as he was head of Swain Lumber Mill. Swain pointed out to Baker that Bob Lambert was guilty as sin. He had shot a man in front of several witnesses, and after doing so had asked, "Is he dead?" And then rather waiting for an answer, he had shot the victim again.

When Bill Swain advised Howard Baker he should dismiss such an awful client, Baker responded, "Bill, in our legal system everyone is entitled to representation."

Bob Lambert was not acquitted, but he wasn't sent to the Tennessee electric chair in Nashville, as the prosecutor sought. Not one of Howard Baker's 63 capital case clients was ever given the death penalty.

There were two keys to Howard Baker's effectiveness as a trial lawyer. First, he got along well with opposing counsel, even the prosecutors in the capital cases. "We were fellow circuit riders", Baker observed. Baker and his adversaries would battle each other in the court all day and then enjoy drinks and dinner together at night.

The other key to Baker's success as a trial lawyer was his courtroom style. He was particularly effective at the art of cross-examination, using a style that appeared so friendly even to adverse witnesses that they ended up saying a lot more from the witness stand than they should have.

And jurors loved Howard Baker. "Juries just trusted him," recalled his law partner, Don Stansberry. "He was just so credible."

In 1954, Baker briefly left the courthouses of Tennessee to go to Washington to serve as an assistant to Ray H. Jenkins, Chief Counsel for the Senate committee investigating Senator Joseph McCarthy's charges that Communists had infiltrated the United States Army. The assignment also renewed his friendship with Robert F. Kennedy, the fellow V-12 Ensign he had met in San Francisco in 1945. Kennedy was the committee's minority counsel. Baker was excited about the assignment until, as he later recalled, "I realized that my only duty was to read daily transcripts." He quickly returned to his life as a busy Tennessee trial lawyer.

Baker's effectiveness as a lawyer was based in large measure on what he believed the law is really all about. Baker felt that while cases and trials are by definition contentious, the real purpose of the law is to resolve conflicts, not to create them.

In a 2005 television interview, Howard Baker summarized his belief in the rule of law:

The rule of law is an interesting phrase. I don't think it's ever really been defined with exactitude. But to me, the law is the lattice work that civilization uses for ordering people's relationships with each other and to govern their conduct. That is the law. The law is not statute law, the law is not precedent, it's not Supreme Court decisions, or any other court's decision. The law is an accumulation of the determination of mankind to find ways to get along, to respect each other, to have a decent respect for different points of view, and to translate disagreement into some sort of resolution. That's what the law is. And without the law, we would not have civilization.

Howard Baker loved being a lawyer, and the very civil nature of his approach before judges and juries made him incredibly effective. While Howard Baker, Sr. was in Washington serving in Congress, young Howard Henry was more than happy to be running the Baker family law practice, and he saw this as his life's work.

On January 7, 1964, Howard Baker was in Washington arguing a case before the Federal Power Commission. The proceedings were interrupted when Baker's father-in-law walked into

the hearing room. Senator Dirksen took Baker aside and broke the news that Howard Baker, Sr. had suffered a fatal heart attack.

With the passing of his father, Howard Baker was about to enter a new era of his life. After fifteen years in the courtroom, he was about to enter a new and even more contentious arena, politics.

His stepmother, Irene, headed to Congress to fill out Howard Baker, Sr.'s unexpired term. Howard H. Baker, Jr. then made a bold move. On May 26, 1964, he announced that he was a candidate for the United States Senate.